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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
MARY ROSS,	)	
Employee	)	OEA Matter No. 2401-0208-10
	)	
v.	)	Date of Issuance: May 2, 2012
	)	
DISTRICT OF COLUMBIA PUBLIC SCHOOLS,	)	MONICA DOHNJI, Esq.
Agency	)	Administrative Judge
	)	

Vanessa Carpenter Lourie, Esq., Employee's Representative
Sara White, Esq., Agency's Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On December 1, 2009, Mary Ross ("Employee") filed a petition for appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the D.C. Public Schools' ("Agency" or "DCPS") action of abolishing her position through a Reduction-In-Force ("RIF"). Employee received her RIF notice on October 2, 2009. The effective date of the RIF was November 2, 2009. Employee's position of record at the time her position was abolished was a Special Education Teacher at Prospect Elementary School ("Prospect"). Employee was serving in Educational Service status at the time her position was abolished. On December 31, 2009, Agency filed an Answer to Employee's appeal. I was assigned this matter on or around February 7, 2012. Thereafter, on February 17, 2012, I ordered the parties to submit briefs on the issue of whether Agency conducted the instant RIF in accordance with applicable District laws, statues, and regulations. Both parties complied. The record is now closed.

JURISDICTION

The jurisdiction of this Office has not been established.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

ANALYSIS AND CONCLUSIONS OF LAW

On September 10, 2009, former D.C. School Chancellor Michelle Rhee authorized a Reduction-in-Force ("RIF") pursuant to D.C. Code § 1-624.02, 5 DCMR Chapter 15, and Mayor's Order 2007-186. Chancellor Rhee stated that the RIF was necessitated for budgetary reasons, explaining that the 2010 DCPS fiscal year budget was not sufficient to support the current number of positions in the schools.[1]

Employee submits that Agency failed to follow appropriate RIF procedures and as such, an evidentiary hearing should be conducted.[2] Additionally, Employee contends that she involuntarily retired after receiving the RIF Notice.[3] Employee explains that "…on May 11, 2011, she was forced to apply for her DCPS retiree benefits due to financial constraints."[4] Employee further explains that she selected involuntary retirement in her application for retirement benefits as her retirement was the result of a RIF separation.[5] Employee also asserts that she did not have a meaningful round of lateral competition at her competitive level because the criteria used to evaluate her was not within her competitive level.[6] Agency submits that it conducted the RIF in accordance with the District of Columbia Municipal Regulations and the D.C. Official Code by affording Employee one round of lateral competition and thirty (30) days written notice prior to the effective date of her separation.[7]

There is a question as to whether OEA has jurisdiction over this appeal. Employee stated in her brief that she involuntarily retired from Agency after being RIFed. Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the CMPA, sets forth the law governing this Office. D.C. Official Code § 1-606.03 ("Appeal procedures") reads in pertinent part as follows:

> (a) An employee may appeal [to this Office] a final agency decision affecting a performance rating which results in removal of the employee . . ., an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more . . ., or a reduction in force [RIF]. . . .

OEA Rule 628.2, 59 DCR 2129 (March 16, 2012), states that "[t]he employee shall have the burden of proof as to issues of jurisdiction..." Pursuant to OEA Rule 628.1, *id.*, the burden of proof is by a preponderance of the evidence which is defined as "[t]hat degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue."

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[1] See *Agency's Answer*, Tab 1 (December 31, 2009); *Agency's Brief* dated March 12, 2012.
[2] *Petition for Appeal* (December 1, 2009).
[3] *Employee's Brief* (April 2, 2012).
[4] *Id*. at 4.
[5] *Id*. at 11.
[6] *Id.* at 4-11.
[7] *District of Columbia Public Schools' Brief* (March 12, 2012).

This Office has no authority to review issues beyond its jurisdiction.[8] Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.[9] The issue of an Employee's voluntary or involuntary retirement has been adjudicated on numerous occasions by this Office. OEA has consistently held that, there is a legal presumption that retirements are voluntary.[10] Furthermore, I find that this Office lacks jurisdiction to adjudicate a voluntary retirement. However, a retirement where the decision to retire was involuntary is treated as a constructive removal and may be appealed to this Office.[11] A retirement is considered involuntary "when the employee shows that retirement was obtained by agency misinformation or deception."[12] The employee must prove that her retirement was involuntary by showing that it resulted from undue coercion or misrepresentation (mistaken information) by Agency upon which she relied when making her decision to retire. She must also show "that a reasonable person would have been misled by the Agency's statements."[13]

Here, Employee asserts that this Office has jurisdiction over her appeal because she involuntarily retired after being RIFed. Employee explains that, she had been unemployed for over a year when she was forced to apply for retirement due to financial constraints. She further explained that Retirement Board employee Sheila Reid noted in her file that her retirement was involuntary; however, her Notice of Personnel Action states that she "Elected to Retire."[14] On May 11, 2011, Employee elected to retire because she was having financial difficulties. She chose to retire in order to continue to receive an income. Although motivated by a financial hardship, Employee's decision to retire was her choosing and as such, this Office lacks jurisdiction over her appeal.

Regardless of Employee's protestations, I find that the facts and circumstances surrounding Employee's retirement was Employee's own choice and Employee has enjoyed the benefits of retiring. Employee's choice to retire in the face of a seemingly unpleasant situation – financial hardship, does not make Employee's retirement involuntary. Furthermore, I find no *credible* evidence of misrepresentation or deceit on the part of Agency in procuring the retirement of Employee. There is no evidence that Agency misinformed Employee about her option to retire. Based on the foregoing, I find that Employee's retirement was voluntary.[15] I

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[8] *See Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).
[9] *See Brown v. District of Columbia Public Schools*, OEA Matter No. 1601-0027-87, *Opinion and Order on Petition for Review* (July 29, 1993); *Jordan v. Department of Human Services*, OEA Matter No. 1601-0110-90, *Opinion and Order on Petition for Review* (January 22, 1993); *Maradi v. District of Columbia Gen. Hosp.*, OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995).
[10] *See Christie v. United States*, 518 F.2d 584, 587 (Ct. Cl. 1975); *Charles M. Bagenstose v. D.C. Public Schools,* OEA Matter No. 2401-1224-96 (October 23, 2001).
[11] *Id*. at 587.
[12] *See Jenson v. Merit Systems Protection Board*, 47 F.3d 1183 (Fed. Cir. 1995), and *Covington v. Department of Health and Human Services*, 750 F.2.d 937 (Fed. Cir. 1984).
[13] *Id.*
[14] *Employee's Brief*, *Supra*, at p. 11.
[15] The Court in *Christie* stated that "[w]hile it is possible plaintiff, herself, perceived no viable alternative but to tender her resignation, the record evidence supports CSC's finding that plaintiff chose to resign and accept discontinued service retirement rather than challenge the validity of her proposed discharge for cause. The fact remains, plaintiff *had a choice*. She could stand pat and fight. She chose not to. Merely because plaintiff was faced with an inherently unpleasant situation in that her choice was arguably limited to two unpleasant alternatives does not obviate the involuntariness of her resignation." *Christie, supra* at 587-588. (citations omitted).

further find that, this Office lacks jurisdiction over this matter, and for this reason, I am unable to address the factual merits, if any, of this appeal.

ORDER

It is hereby **ORDERED** that the petition in this matter is DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Administrative Judge